

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Danny Williams,

Plaintiff,

v.

Case No. 2:08cv63

John Doe, et al.,

Judge Michael H. Watson

Defendants.

ORDER

This matter is before the Court on the objection filed by plaintiff, Danny Williams, to the Magistrate Judge's Report and Recommendation filed September 5, 2008. In the Report and Recommendation, the Magistrate Judge recommended that the motion for summary judgment filed by defendant John Roberts be granted.

When objections are received to a magistrate judge's report and recommendation on a dispositive matter, the district judge "shall make a de novo determination of any portion of the magistrate judge's disposition to which specific written objection has been made...." Fed. R. Civ. P. 72(b). After review, the district judge "may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions." Id.; see also 28 U.S.C. §636(b)(2)(B). For the following reasons, the objection will be overruled and the motion for summary judgment filed by

defendant John Roberts will be granted.

Mr. Williams filed this action alleging various claims against various defendants including Dr. Roberts. With respect to Dr. Roberts, Mr. Williams alleged deliberate indifference to a medical condition in violation of the Eighth Amendment. This allegation arose from Dr. Roberts's failure to remove syndesmosis screws from Mr. Williams's leg following ankle surgery. According to Mr. Williams, he has suffered chronic ankle pain as a result.

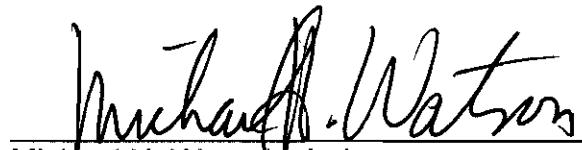
The Magistrate Judge found that, in response to Dr. Roberts's affidavit detailing his treatment, Mr. Williams failed to raise any genuine issue of material fact regarding the alleged deliberate indifference. Specifically, the Magistrate Judge concluded that Mr. Williams did not provide any evidence of Dr. Roberts's subjective intent to cause Mr. Williams pain by failing to remove the screws as required to succeed on an Eighth Amendment claim. See Farmer v. Brennan, 511 U.S. 825, 839 (1994).

In his objection, Mr. Williams has raised the same arguments considered at length in the Magistrate Judge's Report and Recommendation. Because Mr. Williams fails to raise any new arguments or issues in his objection, this Court, after a de novo review, will adopt the Magistrate Judge's Report and Recommendation in its entirety. See Kittle v. State of Ohio, 2006 WL 2128908 at *1 (S.D. Ohio July 27, 2006) (citing Howard v. Secretary of Health and Human Services, 932 F.3d 505, 509 (6th Cir.1991)). Accordingly, Mr. Williams's objection is OVERRULED.

Further, the Court notes that the remaining defendant John Doe (Ratalt)

has never been served. By order dated October 2, 2008, Mr. Williams was given ten days to show good cause why this case should not be dismissed as to this defendant or why an extension of time to effect service should be granted. Mr. Williams has not responded. Consequently, all claims against this defendant will be dismissed without prejudice for failure of service.

Based on the foregoing, the Court overrules Mr. Williams's objection and adopts the Magistrate Judge's Report and Recommendation (#21) in its entirety. Accordingly, the motion for summary judgment filed by defendant John Roberts is granted. Further, this action is dismissed without prejudice with respect to the remaining defendant, John Doe (Ratalt). The Clerk is directed to enter judgment in favor of defendant John Roberts and close this case.



Michael H. Watson
Michael H. Watson, Judge
United States District Court